IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2216 of 2006
TO
FIRST APPEAL No. 2229 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SPL.LAQ OFFICER - Appellant
Versus
SAMJIBHAI CHHELABHAI & 2 - Defendants

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Appearance :
MR LR POOJARI, AGP for Appellant,
MR DEVENDRA A PATEL for Defendants
None for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 24/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. These appeal filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908 are directed against the common judgment and award dated November 05, 2004 rendered by the learned Civil Judge(S.D.), Surendranagar in Land Reference Case Nos. 53/98 to 66/98 by which the claimants are awarded additional compensation at the rate of Rs. 15.34 paise per Sq.Mtr. for irrigated lands and Rs. 10.35 paise per Sq.Mtr. for non-irrigated lands, over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.0.66 paise per Sq.Mtr. for irrigated lands and Rs.0.44 paise per Sq.Mtr. for non-irrigated lands by his award dated January 31, 1996.

2. The Executive Engineer, Narmada Project, Unit No.11, Saurashtra Branch, Surendranagar proposed to the State Government to acquire lands of Village – Jyotipura, Taluka – Lakhtar, District- Surendranagar for the public purpose of construction of Saurashtra

Branch Canal under the Narmada project. On scrutiny of the said proposal, the State Government was satisfied that the lands of Village – Jyotipura were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued which was published in the Official Gazette on October 06, 1992. The land owners were thereafter served with the notices. They opposed the proposed acquisition. After considering their objections, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On perusal of the same, the State Government was satisfied that the lands of Village – Jyotipura which were specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of construction of the Saurashtra Branch Canal under the Narmada project. Therefore, a declaration under Section 6 of the Act was made which was published in the Official Gazette on November 08, 1993. The interested persons were thereafter served with the notices for determination of the compensation payable to them. The claimants appeared

before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 75/- per Sq.Mtr. for irrigated lands and Rs. 50/- per Sq.Mtr. for non-irrigated lands. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated January 31, 1996 offered to the claimants compensation at the rate of Rs.0.66 paise per Sq.Mtr. for irrigated lands and Rs. 0.44 paise per Sq.Mtr. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly references were made to the District Court, Surendranagar which were registered as Land Reference Case Nos. 53/98 to 66/98.

3. On behalf of the claimants witness – Ishwarbhai Chhelabhai was examined at Exhibit – 35.

He claimed before the Reference Court that his village – Jyotipura was fairly developed though the main occupation of the residents of the village was agriculture. According to him, each claimant was taking two crops in a year i.e. one in the rainy season and another in winter season. The witness mentioned that during winter season, each claimant was able to grow Wheat, Raido, Cumin Seed etc. The witness claimed that the claimants were able to raise crop of Rice and each claimant was able to get 40 *Maunds* of Rice per Vigha price of which at the relevant time was Rs.200/- per *Maund*. The witness mentioned that each claimant was able to get crop of 35 *Maunds* of Cotton price of which was Rs.500/- per *Maund*. The witness stated that each claimant was able to grow 40 *Maunds* of Jowar per Vigha price of which was between Rs. 30/- to Rs.35/- per *Maund*. According to the witness, the claimants were also able to raise crop of 35 *Maunds* of Cumin Seeds per Vigha price of which was Rs. 2000/- per *Maund*. The witness further claimed that each claimant was also able to raise 40 *Maunds* of wheat price of which at the relevant time was Rs. 250/- per *Maund*. The witness mentioned that

agricultural produce used to be sold at Viramgam Market Yard whereas Cumin Seed were being sold at Unja. In his cross-examination, the witness admitted that he was not in possession of the bills indicating sale of agricultural produces relating to the period before the possession of lands acquired, was taken over by the Government and that he had produced bills of subsequent period. The suggestion made by the learned Counsel for the appellants that the price of Cumin seeds at the relevant time was between Rs. 1500 to Rs. 1700 was admitted by him.

4. Almost similar evidence was led by other witnesses examined on behalf of the claimants i.e. (1) Nagarbhai Sondabhai – Exhibit-37, (2) Chaturbhai Revabhai – Exhibit-43 and (3) Bababhai Kamabhai – Exhibit-44 and their detailed discussion of their evidence is avoided.

5. On behalf of the appellants witness Rajendra Nanalal Patel who was Deputy Executive Engineer was examined at Exhibit-49. The said witness stated that the Special Land Acquisition Officer had determined

the compensation payable to the claimants after taking into consideration the relevant factors, and therefore, the claimants were not entitled to enhanced compensation. It was mentioned by the said witness that Survey No.87 paiki, Survey No.71 paiki and Survey No. 21 were situated at a distance between 800 to 1200 metres from the Canal and he produced the documents indicating the sale of those Survey Nos. at Exhibits - 50 to 53 respectively. However in cross-examination the witness mentioned that the lands which were acquired were fertile and that in five to six Survey Nos., wells were also situated from which the claimants were getting necessary water for irrigation. At the time of arguments, the claimants also produced the previous award of the Reference Court relating to the lands of Village – Hebatpura for consideration of the Court.

6. On appreciation of the evidence adduced by the parties, the Reference Court noticed that the enhanced compensation was not claimed by the claimants on the basis of comparable sale instances. The Reference Court took into consideration the

previous award of the Reference Court relating to the lands of Village -Hebatpura and concluded that it was a relevant piece of evidence to be taken into consideration. Thereafter, the Reference Court proceeded to determine the market value of the lands acquired on the basis of yield. The Reference Court did guess work and held that the income derived by each claimant from the sale of agricultural produce was Rs. 5125/-. From the said figure, the Reference Court deducted 50% towards the cost of cultivation and concluded that the net income per Vigha earned by each claimant was Rs. 2562/- i.e. Rs. 16015.62 paise per Hectare. Thereafter, the Reference Court adopted multiplier of 10 in order to determine years' purchase price and came to the conclusion that the market value of the lands acquired on yield basis was Rs.1,60,156/- per Hectare.

7. As far as non-irrigated lands are concerned, the Reference Court noticed that the claimants were able to raise certain crops i.e. Cotton, Millet etc. during the monsoon season and they were able to earn income of Rs. 3525/- per Sq.Mtr. per Vigha from the

sale of the agricultural produce. The Reference Court thereafter, deducted 50% towards agricultural cost and then multiplied the said figure by 10 and in ultimate analysis, the Reference Court held that the claimants were entitled to compensation at the rate of Rs.1,10,000/- per Hectare for non-irrigated lands. On the basis of calculations indicated above, the Reference Court has held that the claimants are entitled to get additional compensation at the rate of Rs.15.34 paise per Sq.Mtr. for their irrigated lands and Rs. 10.35 paise per Sq.Mtr. for their non-irrigated lands by impugned award, giving rise to these appeals.

8. This Court has heard Mr.L.R.Poojari, learned Assistant Government Pleader for the appellants and Mr.Devendra Patel, learned Counsel for the claimants in each appeal. This Court has also considered the paper book, supplied by the learned Counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

9. It is well settled that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification issued under Section 4(1) of the Act and the methods of valuation are: (1) opinion of experts: (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about

the date of notification under Section 4(1) or otherwise, the Court has no other alternative but to fall back on the method of valuation by capitalization. In valuing land or an interest in land for purposes of land acquisition proceedings, the rule as to number of years' purchase is not a theoretical or legal rule but depends upon economic factors such as the prevailing rate of interest in investing money etc. It is fairly established by judicial pronouncements that a person investing his capital in agricultural lands would ordinarily expect a return of 2 percent to 3 percent more than what he could obtain from gilt-edged securities or other forms of safe investments. The fluctuations in price of agricultural produce introduce a great deal of uncertainty in regard to the income that can be expected from the sale of the produce and therefore, while adopting capitalization method the Courts should adopt multiplier of 10 to arrive at the market value of the lands acquired.

10. Having noticed the relevant principles which govern the determination of the market value of the lands acquired on yield basis, this Court has considered the submission advanced at the Bar and the evidence adduced by the parties. After reading the oral testimony of the witnesses and going through the documents, the learned Counsel for the parties have agreed that the previous award of the Reference Court relating to the lands of village – Hebatpura is of little assistance and therefore, should be ignored. Accordingly, the said award is not taken into consideration while determining the market value of the lands acquired in the instant case. The learned Counsels for the parties have further agreed that for the purpose of determining the market value of the lands acquired in the instant case on yield basis, the Court should take into consideration the income derived by the claimants from sale of only two crops namely Jovar and Wheat. It may be mentioned that though

satisfactory evidence has not been led by the claimants regarding the price of those commodities prevailing at the time of publication of notification under Section 4(1) of the Act, this Court is of the opinion that on the said ground the claimants should not be non-suited. Their evidence will have to be subjected to close scrutiny. Though it was claimed by witness – Ishwarbhai Chhelabhai examined at Exhibit – 35 that each claimant was able to raise crop of 70 *Maunds* of Jovar per Vigha, this Court is of the opinion that the said assertion is full of exaggeration and as suggested by the learned Counsels for the parties, it would be reasonable to hold that each claimant was able to raise 35 *Maunds* of Jovar per Vigha. The record would show that price of Jovar at the relevant time at the best was Rs. 30/- per *Maund* which means that each claimant was able to get income of Rs.1050/- per year per Vigha from sale of Jovar. Similarly witness Ishwarbhai had asserted before the Court that each claimant was able to get 40 *Maunds* of Wheat per Vigha per year but here also this Court finds that the said claim is full of exaggeration and

therefore, as suggested by the learned Counsels for the parties, it will have to be held that each claimant was able to get 20 *Maunds* of Wheat per Vigha per year. The price of Wheat at the relevant time was Rs.250/- per *Maund* which means that each claimant was able to derive income of Rs. 5,000/- per Vigha per year from the sale of Wheat. Thus, the evidence on record establishes that each claimant was able to get income of Rs.6050/- per year per Vigha from the sale of two agricultural produces. As held by the Supreme Court 50% will have to be deducted towards the cost of cultivation. If that is done, the net income derived would come Rs.3025/-. It is well settled that while determining the market value of the lands on yield, multiplier of 10 has to be applied. If net income of Rs.3025/- is multiplied by 10, income derived on yield basis would be Rs.30,250/- i.e. Rs.12.72 paise per Sq.Mtr. Having regard to the facts of the case, the said figure is rounded off to Rs.13/- per Sq.Mtr. The Reference Court in the instant case has awarded, in all, compensation to the claimants at the rate of Rs. 16/- per Sq.Mtr for irrigated lands and Rs.10.78 paise per Sq.Mtr. for

non-irrigated lands but in view of the findings recorded by this Court, the claimants would be entitled to get compensation at the rate of Rs.13/- per Sq.Mtr. for their irrigated lands and the claimants who were owners of non-irrigated lands would be entitled to compensation at the rate of Rs.8/- per Sq.Mtr because it is well settled that for the purpose of assessing market value of non-irrigated lands, 25% has to be deducted from the price of the irrigated lands. Thus, on re-appreciation of the evidence, this Court is of the opinion that the claimants would be able to get compensation at the rate of Rs.13/- per Sq.Mtr. for irrigated lands and Rs.8/- per Sq.Mtr. for non-irrigated lands. The appeals therefore, will have to be accepted in part.

11. For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated November 05, 2004 rendered by the Civil Judge(S.D.), Surendranagar in Land Reference Case Nos. 53/98 to 66/98 awarding compensation to the claimants at the rate of Rs.16/- per Sq.Mtr. for irrigated lands and

Rs.10.78 paise per Sq.Mtr. for non-irrigated lands is hereby modified and it is held that the claimants would be entitled compensation at the rate of Rs.13/- per Sq.Mtr. for irrigated lands and Rs.8/- per Sq.Mtr. for non-irrigated lands. The other benefits granted to the claimants which are mentioned in the impugned award are not interfered with at all and hereby upheld. The appeals are allowed to the extent indicated above. There shall be no order as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

[J.M.PANCHAL,J.]

[SMT. ABHILASHA KUMARI, J.]

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